

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 285 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

CAPS AND CONTAINERS

Versus

BANK OF BARODA

Appearance:

MR NP PRAJAPATI for Petitioners

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/12/1999

ORAL JUDGEMENT

Heard the learned counsel for the petitioner.

2. Challenge has been made to the order of the Judge, City Civil Court No.5, Ahmedabad dated 8-12-1993 below Ex.1 in Darkhast No. 742 of 1990 whereunder objection filed by the petitioners against the execution

of the decree passed against them came to be rejected.

3. The facts of the case in short compass are that in summary civil suit No. 1079 of 1977 on 17th February, 1978 a decree was came to be passed by the learned trial court against the petitioners in favour of the Bank of Baroda, Ahmedabad, the plaintiff thereof. The execution application has been filed which came to be rejected on 27th September, 1985. The present Darkhast is filed on 10th October, 1990. An objection has been raised that this Darkhast is barred by limitation as 12 years have already been expired from the date of decree which objection was not accepted and the learned Executing Court issued the jangam warrant against the petitioners. Hence, this revision application before this court.

4. For all this time, these proceedings are lying stayed. Learned counsel for the petitioners contended that this execution application is barred by limitation. Reference in this respect has been made to the Limitation Act and Article 136 thereof. A question does arise that the order passed by the court below is taken as a perverse order or an order in passing of which the court below has no jurisdiction or material irregularity in exercise of jurisdiction has been committed in passing of the same.

5. Learned executing court is correct in its approach and it rightly held that the present proceedings are same in nature and character to the earlier proceedings initiated vide Darkhast No. 583 of 1979. Learned counsel for the petitioners has failed to show anything on the record to satisfy the court that the present proceedings can not be treated in continuation or in revival of the earlier execution proceedings. Learned counsel for the petitioners does not dispute that the execution application No. 583 of 1979 was dismissed only for non-compliance of the order to remove the office objection within prescribed period on 10-12-1979. Similarly, the other Darkhast No. 702 of 1984 was dismissed on 27th September, 1985 on account of non-removal of the objection and then this present Darkhast has bee filed. It is understandable where the earlier Darkhast would have been dismissed on merits then there would not have been any occasion for the respondent - decree holder to file an application for revival of the same. Learned counsel for the petitioners submitted that it is not an application for revival of the earlier application but in fact it is a fresh application and it is barred by limitation. If we go by the technical approach then what he contends may be technically correct

but the substance of the matter has to be considered and it is a decree of the Bank which has not been satisfied by the petitioners. If the public money is allowed to be retained by the persons of the category to which the petitioners belong then it is a very serious thing and on such technicalities if the decree of the banks are allowed to go unexecuted it will not only be the loss to the public money but it may have serious repercussions. It is a case where the learned trial court has rightly considered it to be a case of revival of the application and having taken into consideration the fact that the earlier two applications filed by the respondent for execution of the decree are dismissed only on the ground of nonremoval of office objection. The objection that the execution is barred by limitation has rightly been rejected. Each case has to be decided on its own facts and in the facts of this case, otherwise also, I am satisfied that the provisions of section 151, C.P.C. can be applied and the earlier application which has been dismissed only for non removal of office objection certainly could have been ordered to be revived. It is a case where in case the objection of the nature is allowed and the execution applications are held to be not maintainable more so in the case of decrees of the Bank, it will have serious repercussions. Moreover, under section 115 of C.P.C. every order even if the case is made out under clause (a) (b) or (c) of subsection 1 of section 115 is not revisable where the court is satisfied that in case the order is allowed to stand it will not occasion any failure of justice or will not cause any injury to the petitioners. The petitioners are not disputing the fact that the decree has been passed in the suit of the Bank against them. The petitioners are not the bonafide persons. Otherwise also the discretionary remedies of this court are not meant for dishonest persons. Even if it is taken that the limitation bars the execution of the decree still the decree is there and as they have taken money from the Bank they should not have taken such technical approach and voluntarily should have paid the amount. The remedy under section 115 is not only discretionary but at the same time it is equitable and for this class of persons, equities certainly are not in their favour. At the cost of repetition, it is submitted that in case this order is allowed to be maintained it will not occasion any failure of justice or will cause any injury to the petitioners in any way as the amount has been taken by the petitioners from the Bank and for which a decree has been passed.

6. As a result of the aforesaid discussion, this revision application fails and the same is dismissed.

Rule discharged. Interim relief, if any, granted by this court stands vacated. As nobody has put appearance of the respondent, no order as to costs.

zgs/-